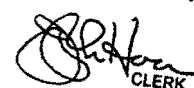


FILED

APR 26 2013


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROBERT B. MONLUX,

Plaintiff,

-VS-

CAROLYN COLVIN,
Commissioner of Social Security,

Defendant.

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CIV. 11-4180

ORDER
(Doc. 21, Motion for Attorney's Fees)

Pending is Attorney Steven Pfeiffer's Motion for Attorney's fees pursuant to 42 U.S.C. § 406(b). (Doc. 21). Pfeiffer has submitted an Affidavit (Doc. 21-1); the SSA Notice of Award (Doc. 21-2); a billing statement (Doc. 21-3); and a copy of Plaintiff Robert Monlux's fee agreement with Pfeiffer (Doc. 21-4); along with a Memorandum in support of the Motion. Doc. 22. The Defendant has indicated it does not object. Doc. 23.

BACKGROUND

Pfeiffer represented Monlux in Monlux's claim for Social Security Disability benefits. Pfeiffer's legal representation in federal court began in September, 2010 and spanned two civil actions (Civ. 10-4161 in addition to the instant action). Pfeiffer was ultimately successful in obtaining a reversal of the Commissioner's decision denying benefits. The result is \$82,304.92 in past-due benefits for Monlux. Pursuant to 42 U.S.C. § 406(b) and the fee agreement between Pfeiffer and Monlux, Pfeiffer now requests court authorization of attorney's fees in the amount of 25% of Monlux's past-due benefits, or \$20,576.23. Upon payment of the requested amount, Pfeiffer will refund to Monlux the amounts Pfeiffer has already been awarded in attorney's fees pursuant to the EAJA.¹

¹Pfeiffer has already been awarded attorney's fees pursuant to the EAJA in Civ. 10-4161 and in this action. See Doc. 27 in Civ. 10-4161 and Doc. 20 in this action.

DISCUSSION

Pursuant to 42 U.S.C. § 406(b), a social security claimant who is represented by an attorney and receives a favorable judgment may, as part of that judgment, be awarded a “reasonable” attorney fee “not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.” The United States Supreme Court has clarified that § 406(b)’s language “does not exclude contingent fee contracts that produce fees no higher than the 25 percent ceiling.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 800, 122 S.Ct. 1817, 1824, 152 L.Ed.2d 996 (2002).

Rather, § 406(b) calls for court review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases. Congress has provided one boundary line: Agreements are unenforceable to the extent they provide for fees exceeding 25 percent of the past-due benefits. Within the 25 percent boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered.

Id. 535 U.S. at 807, 122 S.Ct. at 1828. Factors to consider to determine the reasonableness of a contingent fee agreement under § 406(b) are: (1) the character of the representation and the results achieved; (2) whether the attorney was responsible for significant delay in the case; and (3) whether the benefits are out of proportion to the amount of time spent on the case. *Id.*

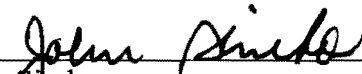
In this case, Pfeiffer has submitted an affidavit indicating his usual non-contingent fee is \$200 per hour. When he wins a contingent case, he expects to receive more than his regular hourly rate in order to compensate him for the risk of non-recovery involved in accepting a social security case (which has already been administratively denied) on a contingent fee basis. If awarded his requested 25% contingent fee amount of \$20,576.23, Pfeiffer’s equivalent hourly fee for the time spent on Monlux’s case will compute to \$363.86 per hour, or 1.8 times his usual non-contingent hourly rate. This hourly rate is comparable to recent §406(b) awards within this geographic area. *See e.g. Warden v. Astrue*, 2012 WL 930799 (W.D. Mo) at *2 (contingency fee rate of \$443.32 per hour approved as reasonable); *Casas v. Astrue*, 2012 WL 5399646 (D. Neb.) at *3 (contingency fee rate of \$471.64 per hour approved as reasonable); *Finney v. Astrue*, 2011 WL 96683 (W.D. Ark.) at *2 (contingency fee rate of \$354.64 per hour approved as reasonable). Applying the factors articulated in *Gisbrecht*, I find Pfeiffer’s request for attorney’s fees pursuant to his agreement with Monlux to be reasonable.

Therefore, IT IS ORDERED:

- (1) Pfeiffer's Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (Doc. 21) is GRANTED;
- (2) The Commissioner is directed to pay Pfeiffer \$20,576.23 in attorney's fees and to release the balance of past-due benefits to Monlux;
- (3) Upon receipt of the § 406(b) attorney fee award, Pfeiffer is directed to refund all EAJA attorney fees received Civ. 10-4161 and in this case to Monlux.

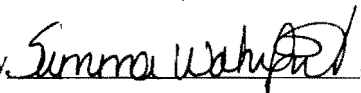
Dated this 26 day of April, 2013.

BY THE COURT:



John E. Simko
United States Magistrate Judge

ATTEST:
JOSEPH HAAS, Clerk

By , Deputy